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attractiveness of a fresh creation. 'Time writes no wrinkles on its brow.' But it is nevertheless a delusion—an evident and obvious delusion. The sleuth hound of fiction is a marvelous dog, but we find nothing quite like him in real life. We repudiate utterly the suggestion that there is any common knowledge of the bloodhound's capacity for trailing which would justify us in accepting his conclusions as trustworthy under circumstances like those disclosed in the present record."

In this case the burglary had been committed at about daylight, and the dogs were not put on the trail until 5 o'clock in the afternoon. The track had been walked over and crossed many time, and the court considered that the problem thus presented to the bloodhound was an exceptionally difficult one. "Undoubtedly," said the court, "nice and delicate questions are time and again presented to him for decision. But the considerations which induced him in a particular case to adopt one conclusion rather than another, cannot go to the jury. The jury cannot know whether the reasons on which he acted were good or bad; whether they were all on one side, or evenly balanced; nor whether his faith in the identity of the scent which he followed was strong or weak. In attempting to separate one smell from ten, twenty, fifty or a hundred similar smells with which it is intermixed and commingled, it is highly probable, if not quite certain, that the bloodhound undertakes a task altogether beyond his capacity." And the court concludes that such evidence is wholly incompetent both on reason and authority, saying that while there are "some cases in this country which held that this kind of evidence is competent, it seems the judicial history of the civilized world is against them."

Whatever may be said for the reasonableness of the court's position, it does not seem to be sustained by authority. No cases are cited on either side of the question, and there seem to be very few in the books, but those few take the other view. Thus in *Simpson* v. *State* (1896), 111 Ala. 6, 20 So. Rep. 572, evidence was admitted to show that bloodhounds, which had been trained to track human beings, were put upon the track of the accused. The defense attempted, on cross-examination, to destroy the effect of this evidence by showing that certain other bloodhounds of the same stock as those which had tracked the defendant, had been put upon a human track and had left it where it was crossed by a sheep's track. But this evidence was held properly excluded. In *Spillman* v. *State* (1898), 38 Tex. Crim. App. 607, 44 S. W. 150, it was held that while the trail of the dogs indicated that the defendant was visiting various places at night, the particular evidence offered showed a different transaction from that charged in the case, and was therefore properly excluded. In *State* v. *Brooks* (Ohio), 9 W. L. J. 109, it was held that in order to identify the prisoner as a murderer, the conduct of his dog soon after in scenting a trail from the spot of the murder and appearing to follow it across a field to a creek where recent footprints like those of the defendant were found, was admissible. And see also *State* v. *Hall*, 3 Ohio N. P. 125. The conduct of a dog may, owing to the particular facts of the case, be of little weight, but under the authorities it does not seem that such evidence is incompetent.

THE "REASONABLE USE" OF SUBTERRANEAN WATERS.—The Supreme Court of California has recently rendered a decision of importance relating to

the use of subterranean waters:—*Katz* v. *Walkinshaw*, Nov.—Dec. 1903—74 Pac. Rep. 766, affirming on rehearing the department decision reported in 70 Pac. Rep. 663. The plaintiffs own certain land situated in the arid district of California. Under these lands water percolates from the hills and is obtainable by means of wells. For over twenty years plaintiffs have thus obtained water and used it on their lands for irrigation and domestic purposes. Defendant owns land adjoining those of plaintiffs, and has placed large pumps on her land, drawing off and diverting the water for the purpose of sale to distant parties, thus leaving plaintiffs' wells dry. The plaintiffs bring this action to enjoin defendant from thus drawing off and diverting the water from their premises. The lower court directed a non-suit, but the Supreme Court reversed the judgment and ordered a new trial. (70 Pac. Rep. 663.) Petitions for a rehearing were presented not only in behalf of the defendant, but also in behalf of a number of corporations engaged in the business of obtaining water from wells and distributing it for public and private use within the state. These corporations were not parties to the action, but were vitally interested in the principle involved. On rehearing, the Supreme Court in banc has unanimously sustained the former decision.

The defendant in this case relied on the common law doctrine that water percolating in the ground or held there in saturation, belongs to the landowner as completely as do the rocks, ground and other material of which the land is composed. He may therefore remove it and sell it or do what he pleases with it. *Acton* v. *Blundell*, 12 Mees. & W. 324. Previous to the decision in the principal case, this doctrine has been generally accepted in the irrigation states of this country, the law of appropriation and diversion of water being confined to surface and subterranean streams. *Hansen* v. *McCue*, 42 Cal. 303, 10 Am. Rep. 299; *So. Pac. R. R. Co.* v. *Dubour*, 95 Cal. 615, 30 Pac. 783, 19 L. R. A. 92; *Huston* v. *Leach*, 53 Cal. 262; *Willow Creek Ice Co.* v. *Michael*, 21 Utah 248; *Gould* v. *Eaton*, 111 Cal. 641, 44 Pac. 319, 52 Am. St. Rep. 201. In the principal case, however, it appears that the application of this doctrine would render absolutely valueless the property of the plaintiffs, for this subterranean water comprises their entire water supply. The court, therefore, applies the doctrine of reasonable use, as it is applied to riparian owners of streams in California and in many of the other western states. The right of the landowner to percolating water is admitted, but, says the court, the right must be exercised with reference to the equal rights of all others to their lands. This modification of the common law rule has been maintained in *Bassett* v. *Mfg. Co.* 43 N. H. 569, 82 Am. Dec. 179;. *Smith* v. *City of Brooklyn*, 46 N. Y. Supp. 141; *Forbell* v. *City of New York*, 164 N. Y. 522, 58 N. E. 644; 51 L. R. A. 695, 79 Am. St. Rep. 666. To the objection that this rule of correlative rights will throw upon the court a duty impossible of performance,—that of apportioning an insufficient supply of water among a large number of users,—the court replies, that the difficulty of its application in extreme cases, is not a sufficient reason for abandoning it and leaving property unprotected by law. The decision in this case, although a radical departure from former holdings, seems to be a natural development of the law of waters as applied to irrigation in the western states, and to be eminently just under the conditions there existing.